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of garnishment, is held, in *Merchants' & M. Nat. Bank v. Barnes* (Mont.), 47 L. R. A. 737, not to be liable to the assignee if the garnishee acknowledged the obligation and paid it over as the property of the debtor. A note to this case reviews the authorities on a sheriff's duty as to adverse claims to proceeds of judgments in his hands except in cases of rival executions.

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PARENT AND CHILD—HABEAS CORPUS.—A girl seventeen years of age, who enters a convent for the purpose of becoming a nun, without having obtained her parent's consent, is held, in *Prieto v. St. Alphonsus Convent of Mercy* (La.), 47 L. R. A. 656, to be subject to the claims of her parents, although she had been received in the convent on the supposition that she had obtained such consent. Under such circumstances it was held that she could be released by writ of habeas corpus, even if the girl was willing and anxious to remain in the convent, and was under no actual restraint.

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CONSTITUTIONAL LAW—"TAKING OR DAMAGING" PRIVATE PROPERTY FOR PUBLIC USE.—The damages to property for which compensation must be made under a constitutional provision that property shall not be taken or "damaged" for public purposes without just and adequate compensation is held, in *Austin v. Augusta Terminal R. Co.* (Ga.), 47 L. R. A. 755, in which the matter is very elaborately discussed, to be limited to such damages as result from some physical interference with the property or with a right or use appurtenant thereto, and not to extend to the diminution in the market value of property caused by the noise, smoke, and cinders made by operating a railroad.

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FOREIGN RECEIVERS—RIGHT TO SUE OUTSIDE OF DOMICILE.—A receiver of a foreign corporation, who by the law of the State of his appointment has title to the right of action against stockholders to enforce their statutory liability, is held, in *Howarth v. Angle* (N. Y.), 47 L. R. A. 725, to be entitled to enforce such liability in another State where a stockholder resides, when the amount of the liability has been definitely ascertained, and is only the stockholder's proportion of the ascertained deficiency of assets, where it does not appear that there is any other stockholder or any creditor of the corporation in that State, or that injury will be thereby done to any citizen of the State, or any established policy of the State thereby interfered with. See 3 Va. Law Reg. 831.

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TRESPASSING ON PUBLIC HIGHWAY.—That one may trespass on a public highway, in which the public has only the easement of passage, is strikingly shown in the recent English case of *Hickenson v. Maisey* (1900), 1 Q. B. 752. We take the following statement of the case from the *Canada Law Journal*:

"The plaintiff was possessed of land traversed by a highway. A trainer of horses had agreed with the plaintiff for the use of some of his land for the training and trial of race horses. A view of the land so used could be obtained from the highway on the plaintiff's land. The defendant was one of the proprietors of a paper which published accounts of the doings of race horses, and for the purpose of getting information as to the performances of horses being trained on the plaintiff's land, the defendant walked backwards and forwards on the highway on the plaintiff's land about fifteen yards in length for about an hour and a half,

watching and taking notes of the trials of race horses on the plaintiff's land. The plaintiff brought an action against the defendant for trespass in thus using the highway, and the jury found a verdict for the plaintiff, and Day, J., who tried the action, gave judgment for the plaintiff and granted an injunction to restrain further trespass by the defendant. On appeal from that judgment the Court of Appeal (Smith, Collins, and Romer, L. JJ.,) following *Harrison v. Rutland* (1893) 1 Q. B. 142, affirmed the decision."

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ANTICIPATORY BREACH OF CONTRACT.—In *Roehm v. Horst*, 20 Sup. Ct. 780, in which was involved the anticipatory breach of contracts, it is said: "But there are many cases in which, before the time fixed for performance, one of the contracting parties may do that which amounts to a breach and furnishes a ground of damages. It has always been the law that where a party deliberately incapacitates himself or renders performance of his contract impossible, his act amounts to an injury to the other party, which gives the other party a cause of action for breach of contract; yet this would seem to be inconsistent with the reasoning in *Daniels v. Newton*, 114 Mass. 530, though it is not there in terms decided 'that an absolute refusal to perform a contract, after the time and under the conditions in which plaintiff is entitled to require performance, is not a breach of the contract, even although the contract is by its terms to continue in the future.' *Parker v. Russell*, 133 Mass. 74.

"In truth, the opinion goes upon a distinction between cases of renunciation before the arrival of the time of performance and those of renunciation of un-matured obligations of a contract while it is in course of performance, and it is said that before the argument on the ground of convenience and mutual advantage to the parties can properly have weight, 'the point to be reached must first be shown to be consistent with logical deductions from the strictly legal aspects of the case.'

"We think that there can be no controlling distinction on this point between the two classes of cases, and that it is proper to consider the reasonableness of the conclusion that the absolute renunciation of particular contracts constitutes such a breach as to justify immediate action and recovery therefor. The parties to a contract which is wholly executory have a right to the maintenance of the contractual relations up to the time for performance as well as to a performance of the contract when due. If it appear that the party who makes an absolute refusal intends thereby to put an end to the contract so far as performance is concerned, and that the other party must accept this position, why should there not be speedy action and settlement in regard to the rights of the parties? Why should a *locus penitentiae* be awarded to the party whose wrongful action has placed the other at such disadvantage? What reasonable distinction *per se* is there between liability for a refusal to perform future acts to be done under a contract in course of performance and liability for a refusal to perform the whole contract made before the time for commencement of performance?

"As Lord Chief Justice Cockburn observed in *Frost v. Knight*, L. R. 7 Exch. 111, the promisee has the right to insist on the contract as subsisting and effective before the arrival of the time for its performance, and its unimpaired and unimpeached efficacy may be essential to his interests, dealing as he may with rights